

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS,  
CORPUS CHRISTI DIVISION

DIAGNOSTIC AFFILIATES OF  
NORTHEAST HOU, LLC D/B/A 24  
HOUR COVID RT-PCR LABORATORY

*Plaintiff,*

v.

UNITED HEALTH GROUP, INC., ET AL

*Defendants.*

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C.A. No. 2:21-cv-00131

**PLAINTIFF’S RESPONSE IN OPPOSITION TO DEFENDANT’S  
MOTION TO DISMISS**

Plaintiff Diagnostic Affiliates of Northeast Hou, LLC d/b/a 24 Hour Covid RT-PCR Laboratory (“Plaintiff”) respectfully submits this Response in Opposition to Defendant’s Motion to Dismiss filed by Delta Account Based Health Plan’s [Doc. 112].

Plaintiff filed this action seeking to recover health plan benefits for COVID-19 diagnostic testing that Plaintiff performed. Plaintiff named as Defendants UnitedHealth Group Incorporated (“UHG”), United HealthCare Services, Inc. (“UHCS”), UnitedHealthcare Benefits of Texas, Inc. (“UHB of Texas”), UnitedHealthcare of Texas, Inc. (“UHC of Texas”), UMR, Inc. (“UMR”), and OptumHealth Care Solutions, LLC (“Optum”) (together, the “United Entities”) and numerous employer-sponsored health benefit plans, including Delta Account Based Health Plan, (“Delta”). With respect to Delta, Plaintiff asserts claims for benefits pursuant to Sections 502(a)(1)(B) and 503 of ERISA and for violation of the Families First Coronavirus Response Act (the “FFCRA”) and the Coronavirus Aid, Relief, Economic Security Act (the “CARES Act”), which are identical

to those asserted against the employer-sponsored health plans who, together with United, have submitted the pending Motion to Dismiss Plaintiff's Complaint and Brief in Support [Doc. 67].

On October 29, 2021, Plaintiff filed Plaintiff's Response Brief in Opposition to Defendants' Motion to Dismiss [Doc. 99].

On November 16, 2021, Delta filed its own motion to dismiss Plaintiff's complaint [Doc. 112], with the identical assertions of UHG and the other 85 Defendants. Plaintiff's defense to the allegations in opposition to Delta's claims are identical to the other Defendants. For the reasons as stated in Plaintiff's Response Brief in Opposition to Defendant's Motion to Dismiss [Doc. 99], Plaintiff hereby joins, incorporates, and adopts by reference the arguments and authorities asserted in Plaintiff's Response in Opposition to Defendant's Motion to Dismiss [Doc. 99] pursuant to Fed. R. Civ. P. 10(c).

### **CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that this Court deny Delta Account Based Health Plan's Motion to Dismiss.

Dated: December 7, 2021

Respectfully Submitted,

By: /s/ Ebad Khan  
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***Attorney for Plaintiff***

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of December 2021, the above and foregoing *Plaintiff's Diagnostic Affiliates of Northeast Houston, LLC d/b/a 24Hour Covid RT-PCR- Laboratory's Response to Motion to Dismiss* was electronically filed with the Clerk of the Court using the CM/ECF system, which sent notice of electronic filing to all counsel of record.

/s/ Ebad Khan

ATTORNEY FOR PLAINTIFF